IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 965 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAILASHBHAI NARAYANBHAI KHATIK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 965 of 2003

MR HR PRAJAPATI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/04/2003

ORAL JUDGEMENT

Heard the learned counsel for the parties. The affidavit tendered by the learned AGP of Mr H.C.Kadia,

Deputy Secretary to Government of Gujarat and Mr Manojkumar Das, District Magistrate, Surat, are taken on record. The affidavit on behalf of Union of India tendered by learned Addl. Central Govt. Standing Counsel Ms Davawala clarifying the stand of the Central Government is also taken on record.

2 By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 13.1.2003 passed against the detenu by the District Magistrate, Surat, in exercise of the powers conferred on him by Section 3(2) of the Gujarat Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the said Act). The order of detention is at Annexure-A, page 40 to the petition. The grounds for detention served to the detenu - Kailashbhai Narayanbhai Khatik are at page 60.

2. The allegation against the petitioner-detenu is that he is not a licence holder who can deal with the trade or any type of business or storage of blue kerosene. According to the sponsoring machinery on 31st August 2002 the business premises of the present petitioner was searched and 1700 liters of kerosene was found. The authorities who had searched and raided the premises was of the view that the kerosene lying in the storage containers is a blue kerosene and was being sold at the rate of Rs.17 per liter so that the same can be used as a fuel by the auto vehicle drivers. I have carefully perused and considered the bunch of papers supplied to the detenu. The learned counsel for the petitioner has also taken me through number of grounds of challenge whereby the petitioner has assailed the order of detention on various grounds. However, during the course of oral submissions, the learned counsel for the petitioner has concentrated his arguments mainly on two grounds. According to Mr Prajapati the subjective satisfaction recorded by the detaining authority is not well-founded and the stock of kerosene was apparently white and the white colour kerosene is available in the free market and therefore the question of black-marketing of free-sale kerosene does not arise. But the main submission of Mr Prajapati is that the detaining authority has failed in passing the order of detention in an expedient manner and the unreasonable delay is caused in passing the order of detention after the alleged search and seizure of the stock of kerosene. It is also submitted that for the same incident total three persons were detained by the authority but one of the detenues

has been set at liberty by the Central Government and the order of detention was revoked by the Central Government. The detenu, whose order of detention was revoked by the Central Government, had also preferred one Special Civil Application No.8236 of 2002 and undisputedly the same was withdrawn on revocation of the order by the Union of India. When this aspect has remained uncontroverted, the present petitioner also can claim that the order of detention if not revoked by the authority on its own, the same should be quashed and there cannot be a discriminatory treatment for the detenues who are alleged to have committed the same and similar wrong.

3 As mentioned in the foregoing paragraphs, stock of 1700 liters of kerosene was found by the government authorities on 31.8.2002. On that very day the statement of Pyarchand was recorded by the authority wherein he had accepted that he was serving under the present petitioner and they are dealing in the business of blue kerosene. Thereafter the statement of Rajubhai was recorded on 1.9.2002 and the statement of the present petitioner was recorded on 5.9.2002. The detaining authority has placed reliance on all these statements along with the report of the FSL. The report of the FSL was positive and it indicates that blue colour was found from the sample drawn from the stock seized from the premises of the present petitioner. The sample was sent for analysis by the sponsoring machinery on 4.9.2002, that is, on the fifth day of the seizure of the stock and it reached to the laboratory on the same day. The Scientific Officer had analysed the sample on or about 4th December 2002. The forwarding letter prepared by the in-charge Scientific Officer is of 4th December 2002. For the reasons best known to the staff working on the establishment of FSL they did not care to despatch the same till 13th December 2002 to the District Supplies Officer. The laboratory report was sent to the District Supplies Officer by the Deputy Director (FSL) on 13th December 2002 and it is contended that the same was received by the sponsoring machinery on 19.12.2002. Therefore, it is assumed that the order of detention could have been passed immediately after receipt of the report from the FSL. There were all other papers including the confessional statement of the detenu as well as his servant and one Rajubhai. The order of detention, as mentioned earlier, is of 13th January 2003. The time taken by the detaining authority in passing the order of detention is unreasonably more. If the delay is caused in passing the order of detention, then, such delay requires convincing explanation. The cause for delay should be placed before the Court and the detaining

authority is supposed to satisfy the Court that the delay caused in passing the order of detention is otherwise justifiable and unplausible explanation or lame excuses cannot help the other side. This Court (Coram: P.B.Majmudar, J.) while dealing with Special Civil Application No.10467 of 2002 has observed that, "delay in passing the detention order in such type of cases would frustrate the entire object of the detaining a person by way of preventive detention." While observing this, the learned Single Judge has considered one another judgement in case of SCA No.78 of 2000 decided by this Court (Coram: A.L.Dave, J.). It would be appropriate to quote the relevant para 6.1 of the said decision as under:-

"6.1 So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August 1999 and the order was passed on 13th December 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit in reply, the detaining authority states as under:-

'I say that it is true that inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999 but at the same time live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention.'

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to 'immediately prevent the petitioner from continuing his black marketing activities.' This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further inquiry/investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for

immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed."

4 On careful reading of the affidavit filed by the District Magistrate, Surat, it transpires that the time taken by the detaining authority in passing the order of detention so far as period between 19th December 2002 and 13th January 2003 is concerned, the same has not been explained in a convincing manner. In absence of such convincing explanation, the ratio of the above two referred decisions positively will help the present petitioner. Therefore, without entering into the merits and other arguments advanced and agitated by Mr Prajapati I am inclined to set aside the order of detention passed by the District Magistrate, Surat, which is under challenge in this petition.

5. For the reasons aforesaid, this petition is allowed. The impugned order of detention dated 13.1.2003 passed against the detenu by the District Magistrate, Surat, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C.K.BUCH, J]

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